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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/814,338	04/01/2004	Chrystel Pourille-Grethen	05725.1318-00000	5358
22852	7590	05/30/2006	EXAMINER	
FINNEGAN, HENDERSON, FARABOW, GARRETT & DUNNER LLP 901 NEW YORK AVENUE, NW WASHINGTON, DC 20001-4413			ELHILO, EISA B	
			ART UNIT	PAPER NUMBER
			1751	

DATE MAILED: 05/30/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No. 10/814,338	Applicant(s) POURILLE-GRETHEN ET AL.	
	Examiner Eisa B. Elhilo	Art Unit 1751	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 3.30.2006.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1,2,4-46 and 49-93 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 49-93 is/are allowed.
- 6) ☒ Claim(s) 1,2 and 4-46 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date <u>3/30/2006</u> . | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

1 This action is responsive to the amendment filed on March 30, 2006.

2 The cancellation of claims 3, 47 and 48 is acknowledged. Pending claims are 1-2, 4-46
and 49-93.

3 The rejection of claims 1-2, 4-8, 10-24, 28-34 and 36-46 under 35 U.S.C. 103(a) as being
unpatentable over Matsunaga et al. (US' 206 A1) in view of Cottard et al. (US' 514 A1), is
maintained for the reasons set forth in the previous office action mailed on 11/2/2005.

4 Claim 9 stands rejected under 35 U.S.C. 103(a) as being unpatentable over Matsunaga et
al. (US' 206 A1) in view of Cottard et al. (US' 514 A1) and further in view of Shibata et al. (US'
077), is maintained for the reasons set forth in the previous office action mailed on 11/2/2005.

5 Claims 25-27 stand rejected under 35 U.S.C. 103(a) as being unpatentable over
Matsunaga et al. (US' 206 A1) in view of Cottard et al. (US' 514 A1) and further in view of
Rondeau et al. (US' 153 B2), is maintained for the reasons set forth in the previous office action
mailed on 11/2/2005.

6 Claim 35 stands rejected under 35 U.S.C. 103(a) as being unpatentable over Matsunaga et
al. (US' 206 A1) in view of Cottard et al. (US' 514 A1) and further in view of Giuseppe et al.
(US' 127), is maintained for the reasons set forth in the previous office action mailed on
11/2/2005.

7 Claims 49-93 are allowed because of the applicant's amendment that excludes
azomethane fluorescent dyes of the primary reference (US' 206 A1).

Response to Applicant's Arguments

8 Applicant's arguments filed 3/30/2006 have been fully considered but they are not persuasive.

With respect to the rejection of the claims under 35 U.S.C. 103(a) as being unpatentable over Matsunaga et al. (US' 630 B2) in view of Cottard et al. (US' 514), Applicant argues that Matsunaga fails to teach or suggest a process for dyeing hair having a tone height of less than or equal to 6 with a lightening effect. Applicant also argues that neither of the secondary references disclose or suggest hair dyeing compositions comprising fluorescent dyes or processes for dyeing hair having a tone height or less than or equal to 6 comprising applying to the hair such fluorescent dyes with at least one amphoteric and nonionic surfactants as claimed.

The examiner respectfully disagrees with the above arguments because Matsunaga et al. (US' 206 A1) clearly teaches the claimed dyeing ingredients (fluorescent of azomethine compound, oxidation bases, couplers and oxidizing agents) in the claimed amounts, which they should have similar properties and could applied to similar human keratin materials, and, thus, there is a clear suggestion and sufficient motivation to one having ordinary skill in the art to apply this dyeing composition to any keratin fibers having different tone heights include skin, and would expect such a composition to have properties and effects similar to those claimed, in the absent of contrary.

In response to applicant's arguments against the references individually, one cannot show nonobviousness by attacking references individually where the rejections are based on combinations of references. See *In re Keller*, 642 F.2d 413, 208 USPQ 871 (CCPA 1981); *In re Merck & Co.*, 800 F.2d 1091, 231 USPQ 375 (Fed. Cir. 1986).

9 **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Eisa B. Elhilo whose telephone number is (571) 272-1315. The examiner can normally be reached on M - F (8:00 -5:30) with alternate Friday off.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Douglas McGinty can be reached on (571) 272-1029. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would

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like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

A handwritten signature in black ink, appearing to read "Eisa Elhilo".

Eisa Elhilo
Primary Examiner
Art Unit 1751

May 25, 2006